

KATRINA'S ANIMAL LEGACY: THE PETS ACT

MARITA MIKE, M.D., J.D.,^{*,#} REBECCA MIKE, D.V.M., CLARK J. LEE, J.D.^{*}

ABSTRACT

Slamming into the Gulf Coast of the United States on August 29, 2005, Hurricane Katrina was associated with more than 1,800 human deaths,¹ the displacement of approximately 770,000 people,² and tens of billions of dollars in economic damage.³ The United States Government described Hurricane Katrina as the most destructive⁴ natural disaster in U.S. history.

In addition to human lives and property lost, Hurricane Katrina had a significant impact on pets and other non-human animals. Rep. Christopher Shays (R - Connecticut), a co-chair of the Congressional Friends of Animals Caucus in May 2006, reported estimates that 600,000 animals either died or were left without shelter as a result of Hurricane Katrina, and that the lack of state and local pet rescue plans put many pet owners in danger because “[w]hen asked to choose between abandoning their pets or their personal safety, many pet

^{*} Center for Health and Homeland Security, University of Maryland, Baltimore, Maryland.

[#] Department of Medicine, Union Memorial Hospital, Baltimore, Maryland, U.S.A.

This paper was submitted for publication on January 22, 2010.

¹ La. Dep't of Health & Hosps., Hurricane Katrina, Reports of Missing and Deceased (Aug. 2, 2006), <http://www.dhh.louisiana.gov/offices/page.asp?ID=192&Detail=5248> (last visited Jan. 22, 2010).

² THE FEDERAL RESPONSE TO HURRICANE KATRINA: LESSONS LEARNED 8 & 157 n.49 (Feb. 2006), *available at* <http://georgewbush-whitehouse.archives.gov/reports/katrina-lessons-learned/>.

³ Press Release, Risk Management Solutions, RMS Expects Economic Loss to Exceed \$100 Billion from Hurricane Katrina and the Great New Orleans Flood (Sept. 2, 2005), *available at* <http://www.prnewswire.com/news-releases/rms-expects-economic-loss-to-exceed-100-billion-from-hurricane-katrina-and-the-great-new-orleans-flood-54689957.html>; RISK MANAGEMENT SOLUTIONS, HURRICANE KATRINA: PROFILE OF A SUPER CAT: LESSONS AND IMPLICATIONS FOR CATASTROPHE RISK MANAGEMENT (Oct. 2005), *available at* http://www.rms.com/publications/KatrinaReport_LessonsandImplications.pdf; and RICHARD D. KNABB, JAMIE R. RHOME & DANIEL P. BROWN, NAT'L HURRICANE CTR., TROPICAL CYCLONE REPORT: HURRICANE KATRINA: 23-30 August 2005 12-13 (Dec. 20, 2005, updated Aug. 10, 2006), *available at* http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf.

⁴ FEDERAL RESPONSE TO HURRICANE KATRINA, *supra* note 2, at 5 & 151 n.2.

owners chose to risk their lives[.]”⁵ Evacuation and rescue plans did not take into account pets and service animals, and existing laws did not require such planning provisions.

The tragic consequences of this gap in planning and preparedness efforts led the U.S. Government to re-evaluate federal policy regarding the evacuation of pets and service animals during a disaster or an emergency.

As a result, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act)⁶ was signed into law.⁷ The Act encourages state and local jurisdictions to take into account the needs of individuals with household pets and service animals in their planning and preparedness activities for major disasters and emergencies. In conjunction with the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA)⁸ and the *National Response Framework*,⁹ the PETS Act has been fundamental in reshaping the federal government’s policy regarding pet evacuation and care during major disasters and other emergencies. Understanding the requirements of the PETS act and related policies is essential for improving state and local emergency plans. With planning and preparedness, states and cities facing disasters or other emergencies may prevent some of the tragedies brought about by Hurricane Katrina.

I. INTRODUCTION

The human, property, and financial impacts of Hurricane Katrina have been well documented. Since slamming into the Gulf Coast of the United States on August 29, 2005, Hurricane Katrina has been associated with over 1,800 human deaths,¹⁰ the evacuation of 1.1

⁵ Christopher Shays, Introduction, *Animal Welfare: Its Place in Legislation*, 12 ANIMAL L. 1, 1-2 & nn.3, 6 (2005); Jim Abrams, *House bill requires pets to be considered in disaster plans*, ASSOCIATED PRESS, May 22, 2006, available at Gina Pace, *House Passes Pet Evacuation Bill*, <http://www.cbsnews.com/stories/2006/05/22/politics/main1644260.shtml>.

⁶ Pub. L. No. 109-308, 120 Stat. 1725 (2006).

⁷ Images broadcast on television of a young boy losing his dog during rescue operations after Hurricane Katrina also have been cited as a catalyst for passing the PETS Act. Abrams, *supra* note 5, available at Pace, *supra* note 5.

⁸ Pub. L. No. 109-295, tit. VI, 120 Stat. 1355, 1394 (2006).

⁹ U.S. DEP’T OF HOMELAND SEC., NATIONAL RESPONSE FRAMEWORK (Jan. 2008), available at <http://www.fema.gov/pdf/emergency/nrf/nrf-core.pdf> and Fed. Emergency Mgmt. Agency, NRF Resource Center, <http://www.fema.gov/emergency/nrf/>.

¹⁰ La. Dep’t of Health & Hosps., *supra* note 1. Hurricane Katrina is believed to be the third deadliest hurricane since 1900. KNABB ET AL., *supra* note 3, at 23-30.

million people,¹¹ the displacement of approximately 770,000 people,¹² nearly \$100 billion in property damage,¹³ and tens of billions of dollars in economic losses.¹⁴ The United States Government has described Hurricane Katrina as the most destructive¹⁵ and likely the costliest¹⁶ natural disaster in U.S. history, and the Federal Emergency Management Agency (FEMA) has provided more assistance funds (over \$6 billion) to victims of Hurricane Katrina than for any other single natural disaster in U.S. history.¹⁷

In addition to human lives and property, Hurricane Katrina also had a significant impact on pets and other non-human animals. According to one account from a volunteer in Louisiana:

People reported being told that their animals would be rescued later. As Katrina first approached, animal response teams from all over the country were staging near Baton Rouge. However, the flooding, looting, fires, and toxic conditions made entering New Orleans impossible for several days. Moreover, there initially was nowhere to house animals, as the New Orleans shelter was unusable.¹⁸

Reps. Tom Lantos (D - California) and Christopher Shays (R - Connecticut), co-chairs of the Congressional Friends of Animals Caucus in the months following Hurricane Katrina, reported that as many as 600,000 pets and animals were affected by the devastation of Hurricane

¹¹ FEDERAL RESPONSE TO HURRICANE KATRINA, *supra* note 2, at 9.

¹² This population displacement was the largest since the Dust Bowl migration from the southern Great Plains region of the U.S. in the 1930s. FEDERAL RESPONSE TO HURRICANE KATRINA, *supra* note 2, at 8 & 157 n.49.

¹³ Hurricane Katrina also destroyed or made uninhabitable an estimated 300,000 homes and left behind 118 million cubic yards of debris (the equivalent of piling over 10.5 miles of debris on an American football field). FEDERAL RESPONSE TO HURRICANE KATRINA, *supra* note 2, at 7-8 & 155 nn.22-24, 28, 30.

¹⁴ RMS Expects Economic Loss, *supra* note 3; HURRICANE KATRINA: PROFILE OF A SUPER CAT, *supra* note 3; and KNABB ET AL., *supra* note 3, at 12-13.

¹⁵ FEDERAL RESPONSE TO HURRICANE KATRINA, *supra* note 2, at 5 & 151 n.2.

¹⁶ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, MORBIDITY AND MORTALITY WEEKLY REPORT, MGUIDE, HURRICANES, *available at* http://www.cdc.gov/mmwr/mguide_nd.html.

¹⁷ Fact Sheet, Fed. Emergency Mgmt. Agency, Frequently Requested National Statistics Hurricane Katrina - One Year Later, *available at* http://www.fema.gov/hazard/hurricane/2005katrina/anniversary_factsheet.shtm.

¹⁸ Leslie Irvine, *Providing for Pets During Disasters, Part II: Animal Response Volunteers in Gonzales, Louisiana*, QUICK RESPONSE RESEARCH REPORT 187 2 (University of Colorado Natural Hazards Center 2006), *available at* <http://www.colorado.edu/hazards/research/qr/qr187/qr187.pdf>.

Katrina,¹⁹ while private rescue organizations saved an estimated 5,000 animals as of September 2005 and reunited 600 animals with their owners.²⁰ Unfortunately, the lack of pet rescue plans in the affected areas put many pet owners in danger, because “[w]hen asked to choose between abandoning their pets or their personal safety, many pet owners chose to risk their lives[.]”²¹

The Humane Society of the United States (HSUS) has reported in recent years that there are over 358 million pets in the U.S. residing in 63 percent of American households, and that a Zogby International poll conducted after Hurricane Katrina devastated the Gulf Coast revealed that 61 percent of pet owners say they would refuse to evacuate if they could not take their pets with them.²² Hurricane Katrina brought to light the fact that existing state and local evacuation and rescue plans did not take into account pets or even service animals, and that no laws existing at the time appeared to require such planning provisions. The tragic consequences of this gap in planning efforts led the federal government to re-evaluate its policy regarding the evacuation of pets during disasters and other emergencies, culminating in the enactment of the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act).²³

¹⁹ Rep. Tom Lantos, Introduction of the Pets Evacuation and Transportation Standards (PETS) Act of 2005, 151 Cong. Rec. E1943 (daily ed. Sept. 22, 2005); *see also* Shays, *supra* note 5, at 1 & n.3 (“Hurricane Katrina left so many victims in its wake, including up to 600,000 animals that lost their lives or were left without shelter.”).

²⁰ Lantos, *supra* note 19, at E1943. One year after Hurricane Katrina made landfall in Louisiana, the Humane Society of the United States reported that “[r]escuers saved more than 10,000 animals in a multi-organization operation that was larger than all previous pet rescue efforts combined.” Press Release, Humane Society of the United States, One Year After Katrina, Pets Factor Into Disaster Planning (Aug. 25, 2006), *available at* http://www.hsus.org/press_and_publications/press_releases/one_year_after_katrina_pets.html (last visited Jan. 22, 2010).

²¹ Abrams, *supra* note 5, *available at* Pace, *supra* note 5; *see also* Shays, *supra* note 5, at 2 & n.6 (“[W]hen asked to choose between abandoning their pets or their own personal safety, many pet owners choose to risk their lives and remain with their pets. Thus, this is not just an animal welfare issue. It is a public safety issue.”).

²² Press Release, The Humane Society of the United States, President Bush Signs Bill to Leave No Pet Behind in Disaster Planning and Evacuation (Oct. 6, 2006), *available at* http://www.humanesociety.org/news/press_releases/2006/10/president_bush_signs_PETS_act_100606.html (last visited Jan. 22, 2010); and Press Release, The Humane Society of the United States, The HSUS Urges Pet Owners to Include Pets in Hurricane Season Preparations (June 10, 2009), *available at* http://www.humanesociety.org/news/press_releases/2009/06/include_pets_in_hurricane_season_preparation_061009.html.

²³ Pub. L. No. 109-308, 120 Stat. 1725 (2006).

This article discusses issues related to the PETS Act and relevant federal policies developed to implement its provisions. Following these introductory remarks, background information is presented in Part II. Part III focuses on the various problems concerning animal evacuations and sheltering that Hurricane Katrina brought to light. Part IV discusses the PETS Act and related laws and policies which were developed in response to the tragedies brought about by Hurricane Katrina. Part V discusses strengths and weaknesses of the PETS Act and recommends next steps to improve implementation of the PETS Act. Concluding remarks are presented in Part VI.

II. BACKGROUND: ANIMAL EVACUATIONS AND SHELTERING IN THE PRE-KATRINA ERA

While Hurricane Katrina drew attention to animal evacuation and needs during disaster and emergency response efforts, it was not the first time disaster responders in the U.S. had to confront these issues. When Hurricane Andrew devastated south Florida in August 1992, an estimated 1,000 healthy and adoptable dogs and cats were euthanized "merely for lack of space in which to house them."²⁴ Several reforms in pet-related disaster planning were initiated in the wake of Hurricane Andrew, the most notable of which was the development of a network of organizations to meet the needs of animals and animal stakeholders during responses to disasters and other emergencies.²⁵ Through formal agreements with federal agencies and the American Red Cross, national veterinary organizations such as the American Veterinary Medical Association (AVMA) and its Veterinary Medical Assistance Teams (VMAT) became responsible for veterinary medical care in

²⁴ Leslie Irvine, *Providing for Pets During Disasters: An Exploratory Study*, QUICK RESPONSE RESEARCH REPORT 171 1, 3 (Natural Hazards Research and Applications Information Center, University of Colorado 2004), available at <http://www.colorado.edu/hazards/research/qr/qr171/qr171.pdf>. In fact, some commentators credit the mass euthanasia of animals in the aftermath of Hurricane Andrew for initially raising awareness in the U.S. animal welfare, emergency management, and emergency responder communities of the importance of incorporating animals into disaster response plans. *Id.* at 1-2; see also Amy Cattafi, Note, *Breed Specific Legislation: The Gap in Emergency Preparedness Provision for Household Pets*, 32 SETON HALL LEGIS. J. 351, 361 & n.80 (2008) ("In many ways, the tragedy of Hurricane Andrew...initiated much of the reform we have today in pet-related disaster planning."), citing William Wan, *A Lesson from Katrina: Pets Matter*, WASH. POST, Jan. 2, 2006, at B01.

²⁵ Irvine, *supra* note 24, at 1.

response to disasters,²⁶ and national animal welfare organizations such as HSUS would deploy into disaster areas at the request of an affected state.²⁷

Several states developed animal response plans in the years following Hurricane Andrew. For example, after Hurricane Floyd killed over three million animals (livestock and pets) in 1999, the major animal stakeholders in North Carolina developed a cooperative response plan that included a state animal response team (SART).²⁸ Joining state government agencies with interested groups in the private sector around the common goal of addressing animal issues during disasters, the SART program involves a public-private partnership based in a non-profit organization that can obtain grants, accept donations, and sub-contract with state government agencies.²⁹ Although several states had developed SART plans or less formal plans for animal response by 2004, one researcher warned at the time that “[e]ven with a well-developed response network, the animal needs may tax this network of resources when disasters occur in multiple communities at once[.]”³⁰

After Hurricane Charley devastated portions of the Florida Gulf Coast in August 2004, a published report examined the ways in which pets were provided for during Hurricane Charley in comparison to

²⁶ For example, the AVMA signed: (1) a Memorandum of Understanding (MOU) with the U.S. Department of Health and Human Services in May 1993 that incorporated veterinary services into the Federal Response Plan (now the *National Response Framework*) for disaster relief as part of the National Disaster Medical System (NDMS); and (2) a Statement of Understanding (SOU) with the American Veterinary Medical Foundation (AVMF) and the Red Cross in January 1998 in which the Red Cross recognized the AVMA and the AVMF as the only national organizations representing the entire profession of licensed veterinarians solely responsible for the diagnosis, treatment, health and well-being of all animals, including and during periods designated as disaster relief. American Veterinary Medical Association, AVMA Veterinary Medical Assistance Teams (VMAT), History of AVMA Emergency Preparedness and Response Programs, <http://www.avma.org/vmat/history.asp>.

²⁷ Other participating animal welfare organizations included the American Humane Association, Code 3 Associates, and Emergency Animal Rescue Services. At times, the labor was divided so that the veterinary organizations would take primary responsibility for large animals (*e.g.*, livestock) and the animal welfare organizations would take responsibility for pets. Irvine, *supra* note 24, at 1.

²⁸ North Carolina State Animal Response Team, About SART, <http://sartusa.org/about-sart>; Irvine, *supra* note 24, at 1.

²⁹ North Carolina State Animal Response Team, SART - State Animal Response Teams, <http://sartusa.org>; Irvine, *supra* note 24, at 1-2.

³⁰ Irvine, *supra* note 24, at 2. Information on other states with SART plans that are currently active or in development is available at North Carolina State Animal Response Team, SART States, <http://sartusa.org/states/states.php>.

Hurricane Andrew twelve years earlier.³¹ Among the report's key findings were that:

- the treatment of animals following Hurricane Charley was significantly improved compared to the situation after Hurricane Andrew;
- the improved treatment could be attributed to the existence of well-developed animal response plans in the affected areas, as well as the reliance on inter-organizational networks; and
- far fewer animals died in the aftermath of Hurricane Charley compared to the aftermath of Hurricane Andrew, and many animals were reunited with their guardians or were placed in new homes.³²

Despite the dramatic improvements in animal response after Hurricane Charley, the report identified several areas for improvement in animal planning efforts. Perhaps the most important of these was that state and local governments needed to develop plans incorporating all animal stakeholders, including pet owners, breeders, veterinarians, ranchers, shelter managers, farmers, zookeepers, and anyone who would be affected by an emergency.³³

Such gaps in policy and planning efforts would have tragic consequences in the aftermath of Hurricane Katrina.

III. HURRICANE KATRINA ANIMAL EVACUATIONS AND SHELTERING

The areas of the Gulf Coast devastated by Hurricane Katrina reportedly did not have "effective plan[s] in place to address evacuation or rescue of pets in disasters" when the storm made landfall in Louisiana in late August 2005.³⁴ One volunteer involved with animal

³¹ Irvine, *supra* note 24.

³² *Id.* at 3. As a point of comparison, two dogs were euthanized after Hurricane Charley because of aggression and injury, whereas an estimated 1,000 healthy and adoptable dogs and cats were euthanized after Hurricane Andrew because of a lack of space. *Id.*

³³ *Id.* at 4, citing Tom Durham & Lacy E. Suiter, *Perspectives and Roles of the State and Federal Governments*, in EMERGENCY MANAGEMENT: PRINCIPLES AND PRACTICE FOR LOCAL GOVERNMENT 101-27 (T.E. Drabek & G.J. Hoetmer eds., International City Management Association 1991), and KATHLEEN J. TIERNEY, MICHAEL K. LINDELL & RONALD W. PERRY, *FACING THE UNEXPECTED: DISASTER PREPAREDNESS AND RESPONSE IN THE UNITED STATES* (Joseph Henry Press 2001). The report also concluded that although the inter-organizational animal response to Hurricane Charley proved to be effective, the availability of responders from the private and non-profit sectors raised the concern that local government efforts to develop public animal response plans would be deterred. *Id.* at 4.

³⁴ HSUS One Year After Katrina, *supra* note 20.

sheltering efforts in the aftermath of Hurricane Katrina later described the chaos that ensued:

In the flooding that followed [Hurricane Katrina], many of the residents forced to evacuate left their pets behind. Many people did so because they were going to motels that would not accept pets. Others, who were rescued in boats, helicopters, and emergency vehicles, report being told by first responders that pets could not come along. Those who were going to emergency shelters had to find alternative arrangements for their animals, as most shelters (such as those provided by the Red Cross) do not allow pets. In many cases, animal shelters will house pets temporarily. This was effective during Hurricane Charley, but Katrina destroyed the New Orleans shelter—the Louisiana Society for the Prevention of Cruelty to Animals (LA-SPCA). Some residents who brought their dogs and cats to the Convention Center had to leave them behind when forced to evacuate from there. Several accounts of that evacuation depict National Guardsmen simply letting dogs and cats run free as their owners watched helplessly.³⁵

A. "No Pets Allowed" Policies

As the above-quoted volunteer observed, many rescue organizations reportedly refused to allow pets to board buses and boats or to enter shelters during Hurricane Katrina evacuation efforts.³⁶ Some commentators and journalists have argued that although some pets were probably abandoned voluntarily by their owners, many pets were probably abandoned because of these bans against pets on evacuation buses and in local evacuation shelters.³⁷

B. Hurricane Katrina Animal Rescue Efforts

Despite the lack of animal-related public planning efforts in the areas devastated by Hurricane Katrina, several national and local non-

³⁵ Irvine, *supra* note 18, at 1 & nn.3-4 (notes and citations omitted) (noting that the LA-SPCA had a disaster response plan in place and that its animals had been transferred to other shelters before Hurricane Katrina struck New Orleans).

³⁶ *Id.* at 1 and 2006 *Legislative Review*, 13 ANIMAL L. 299, 304-05 & nn.39-40 (2007) (notes omitted); see e.g., American Red Cross, Disaster Services Notice 161, Animals in American Red Cross Disaster or Evacuation Shelters (1996).

³⁷ Cattafi, *supra* note 24, at 359 & nn.62-63; Dan Harris & Mark Reeves, *Katrina Rescuers Saved Thousands of Pets*, ABC NEWS, Aug. 27, 2006, available at <http://abcnews.go.com/WNT/HurricaneKatrina/story?id=2362416>. Some evacuees reportedly tried to "smuggle their pets onto the buses going to the evacuation shelters ... despite the fact that the animals would not be allowed into the shelter once they arrived." Cattafi, *supra* note 24, at 360 & n.66, citing Carl Sullivan, *Pets in Peril*, NEWSWEEK, Sept. 15, 2005, available at http://www.rvnewsdaily.com/article.php/pets_peril.

profit animal welfare organizations participated in animal rescue efforts in these areas before and after the storm passed.³⁸ For example, HSUS animal rescue teams were pre-positioned in the Gulf region before Katrina made landfall and coordinated plans with local animal care and control agencies, although the animal rescue efforts of these teams were hampered for several days by federal and state officials who blocked entry to the disaster zones. These HSUS teams also worked with other organizations to set up temporary pet shelters in Gonzales, Louisiana and Hattiesburg, Mississippi and began rescuing animals from flooded streets and homes once they gained access to the disaster zones. The shelter at Gonzales, La. serviced more than 8,000 animals and became the largest animal shelter in the world before closing in early October 2005.³⁹ These non-governmental animal rescue efforts could not meet the significant demand for their services, however: media reports indicated that volunteers in Louisiana were able to rescue alive only 50% of pets that had survived the immediate effects of the storm,⁴⁰ and that many of those pets rescued alive "were in pretty bad shape[.]"⁴¹

C. Lessons Learned from Hurricane Katrina

On September 15, 2005, President George W. Bush ordered a review of lessons learned from the federal response to Hurricane Katrina.⁴² The resulting report, *The Federal Response to Hurricane Katrina: Lessons Learned*,⁴³ included recommendations that would improve the federal government's policy and efforts regarding the evacuation of pets during a disaster or emergency. More specifically, the report recommended in relevant part that the U.S. Department of Homeland Security (DHS, of which FEMA is a part) require state and

³⁸ These animal welfare organizations rely primarily on donations, volunteers, and other grassroots efforts to fund their animal rescue efforts. Cattafi, *supra* note 24, at 360 & nn.70-71.

³⁹ HSUS One Year After Katrina, *supra* note 20.

⁴⁰ Cattafi, *supra* note 24, at 359 & n.61, citing CBS News, *Katrina's Lost Pets Come Home*, Aug. 31, 2006, available at <http://www.cbsnews.com/stories/2006/08/31/earlyshow/main1954985.shtml>.

⁴¹ Cattafi, *supra* note 24, at 359 & n.64, citing Harris & Reeves, *supra* note 37 ("[Animals rescued from New Orleans] had chemical burns from being in the flood waters. They were emaciated. A lot of them had heart worms.").

⁴² George W. Bush, U.S. President, President Discusses Hurricane Relief in Address to the Nation, Address to the Nation (Sept. 15, 2005), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2005/09/20050915-8.html>.

⁴³ FEDERAL RESPONSE TO HURRICANE KATRINA, *supra* note 2.

local governments to develop, implement, and exercise emergency evacuation plans that address the evacuation of pets as a condition for receiving DHS grants.⁴⁴

The gaps in animal-related planning and preparedness exposed by Hurricane Katrina spurred the U.S. Congress to take action less than a month after the storm devastated the Gulf Coast, when the Pets Evacuation and Transportation Standards Act of 2005 (PETS Act) was introduced in the House of Representatives on September 22, 2005.⁴⁵ In his remarks introducing this legislation, Rep. Tom Lantos noted:

The destructive force of Hurricane Katrina exposed many flaws in our nation's emergency preparedness programs, and any disaster plan's top priority must be to save citizens from the affected areas. One easily correctible issue that has come to light, however, is the fact that many of our cities' plans do not incorporate a protocol for rescuing pet owners. Without a corrected protocol, pet owners are unnecessarily forced to choose between their own safety and the safety of their pets.⁴⁶

The advocacy efforts of animal welfare organizations,⁴⁷ along with the recommendations contained in *The Federal Response to Hurricane Katrina: Lessons Learned*, lent considerable support for the PETS Act as it made its way through the legislative process.⁴⁸ Congress ultimately

⁴⁴ *Id.* at 100 (Recommendation 42). The report also recommended that DHS: (1) include animal evacuations as one criterion as part of its joint evaluations with the U.S. Department of Transportation of state and local evacuation plans; and (2) develop tools for state and local governments to use in order to prepare, train, exercise, and engage citizens and communities in all areas of preparedness, including issues related to household pets and other animals. *Id.* at 100 (Recommendation 43) and 122 (Recommendation 122).

⁴⁵ H.R. 3858, 109th Cong. (2005). The bill was introduced by Rep. Tom Lantos for himself and on behalf of Reps. Christopher Shays, Don Young (R - Alaska), James Oberstar (D - Minnesota), and Barney Frank (D - Massachusetts).

⁴⁶ Lantos, *supra* note 19.

⁴⁷ The PETS Act was supported by groups such as the HSUS, the AVMA, the American Society for the Prevention of Cruelty to Animals (ASPCA), and the American Kennel Club, and faced little opposition in Congress. 2006 *Legislative Review*, *supra* note 36, at 305-06 & nn.48-52. See also *id.* at 305 & n.43 ("Animal rights organizations argued that a strong, coordinated effort involving both pre-disaster planning and post-disaster volunteer rescue efforts would have been far more effective in saving both human and animal lives."); and Cattafi, *supra* note 24, at 361 ("While VMAT and other private organizations like the Humane Society struggle to save our country's pets in the midst of national disasters, their efforts will continue to be insufficient and animal lives will continue to be lost without additional federal assistance for this cause.").

⁴⁸ HSUS hailed the PETS Act as a means to "lay the groundwork for a transformation of public policy approaches to the handling of animals in emergency situations." Press Release, Humane Society of the United States, Katrina One Year Later: Great Gains, New Goals in Disaster Preparedness (Aug. 25, 2006), available at <http://www.hsus.org/>

passed the PETS Act as the Pets Evacuation and Transportation Standards Act of 2006.⁴⁹

IV. THE PETS ACT AND RELATED LAWS AND POLICIES

A. Robert T. Stafford Disaster Relief and Emergency Assistance Act

The federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act)⁵⁰ provides “an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage” resulting from disasters and emergencies.⁵¹ Recognizing the necessity of “special measures” designed to assist the response and recovery efforts of states affected by disasters,⁵² the Stafford Act authorizes the President of the United States to declare a “major disaster”⁵³ or state of emergency⁵⁴ and activates various types

hsus_field/hsus_disaster_center/disasters_press_room/archives/2006_disaster_response/katrina_one_year_later_.html (last visited Jan. 22, 2010).

⁴⁹ The House of Representatives passed its version of the PETS Act (H.R. 3858) on May 22, 2006 by a vote of 349 to 24; the Senate unanimously passed an amended version of the PETS Act on August 3, 2006, with which the House subsequently concurred. 152 Cong. Rec. H2985-H2988 (daily ed. May 22, 2006), 152 Cong. Rec. S8884 (daily ed. Aug. 3, 2006), and 152 Cong. Rec. H6806-H6808 (daily ed. Sept. 20, 2006).

⁵⁰ Pub. L. No. 100-707, 102 Stat. 4689, *amending* Disaster Relief Act of 1974, Pub. L. No. 93-288, 88 Stat. 143 (codified as amended at 42 U.S.C. §§ 5121 *et seq.*).

⁵¹ Pub. L. No. 93-288, § 101(b), *amended by* Pub. L. No. 100-707, § 103(a), 102 Stat. 4689, 4689 (codified as amended at 42 U.S.C. §§ 5121(b)).

⁵² Pub. L. No. 93-288, § 101, 88 Stat. 143, 143 (codified at 42 U.S.C. § 5121(a)).

⁵³ Pub. L. No. 93-288, § 401, *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4696 (codified as amended at 42 U.S.C. § 5170). The Stafford Act statutorily defines a “major disaster” to mean “any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under [the Stafford Act] to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused” by such an event. 42 U.S.C. § 5122(1).

⁵⁴ Pub. L. No. 93-288, § 501, *as added by* Pub. L. No. 100-707, § 107(a), 102 Stat. 4689, 4706 (codified as amended at 42 U.S.C. § 5191(a)). The Stafford Act statutorily defines an “emergency” to mean “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.” 42 U.S.C. § 5122(2).

of federal assistance and support (administered by various federal agencies) to affected states and local governments.⁵⁵

*B. Pets Evacuation and Transportation Standards
(PETS) Act of 2006*

Signed into law by President Bush on October 6, 2006, the PETS Act⁵⁶ amended the Stafford Act to:

1. require the FEMA Administrator, in approving standards for state and local emergency preparedness operational plans submitted to FEMA for review,⁵⁷ to ensure that such plans take into account “the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency[]”;⁵⁸
2. authorize the FEMA Administrator to study and develop “plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency[]”;⁵⁹

⁵⁵ Pub. L. No. 93-288, § 402, *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4696, *and amended by* Pub. L. No. 109-295, § 681(a), 120 Stat. 1355, 1444 (codified as amended at 42 U.S.C. § 5170a) and Pub. L. No. 93-288, § 502, *as added by* Pub. L. No. 100-707, § 107(a), 102 Stat. 4689, 4706, *and amended by* Pub. L. No. 109-295, § 681(b), 120 Stat. 1355, 1444 (codified as amended at 42 U.S.C. § 5192(a)). If such federal assistance provided after an emergency declaration is made under the Stafford Act proves to be inadequate, the President may provide additional assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe. 42 U.S.C. 5192(b). Furthermore, on the direction of the President after a major disaster declaration is made under the Stafford Act, federal agencies may provide assistance essential to meeting immediate threats to life and property resulting from a major disaster. Pub. L. No. 93-288, § 403, *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4697, *and amended by* Pub. L. No. 109-295, § 689(b), 120 Stat. 1355, 1449 *and* Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified as amended at 42 U.S.C. § 5170b(a)).

⁵⁶ Pub. L. No. 109-308, 120 Stat. 1725 (2006).

⁵⁷ FEMA reviews such plans as part of the process for states to obtain financial contributions from FEMA for “necessary and essential State and local emergency preparedness personnel and administrative expenses” under the Stafford Act. Pub. L. No. 93-288, § 613(a) and (b)(3), *as added by* Pub. L. No. 103-337, § 3411(a)(3), 108 Stat. 2663, 3106, *and amended by* Pub. L. No. 107-188, § 151, 116 Stat. 594, 630 *and* Pub. L. No. 109-295, § 631, 120 Stat. 1355, 1420 (codified as amended at 42 U.S.C. § 5196b(a) and (b)(3)).

⁵⁸ Pub. L. No. 109-308, §2, 120 Stat. 1725, 1725 (codified as amended at 42 U.S.C. § 5196b(g)) and 42 U.S.C. § 5196b(a).

⁵⁹ Pub. L. No. 109-308, § 3(1), 120 Stat. 1725, 1725 (codified as amended at 42 U.S.C. § 5196(e)(4)).

3. authorize the FEMA Administrator, on the basis of approved programs or projects, to make financial contributions to the states and local authorities for animal emergency preparedness purposes such as the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that will accommodate people with pets and service animals;⁶⁰ and
4. authorize federal agencies responding (on the direction of the President) to a major disaster declared by the President under section 401 of the Stafford Act⁶¹ to provide rescue, care, shelter, and essential needs to people with household pets and service animals, as well as to the pets and animals themselves, on public or private lands or waters.⁶²

*C. FEMA Policy for Implementing the PETS Act*⁶³

FEMA put into effect its Disaster Assistance Policy on “Eligible Costs Related to Pet Evacuations and Sheltering” on October 24, 2007.⁶⁴ This policy focuses principally on the implementation of the PETS Act provisions related to assistance to individuals with household pets and service animals following a major disaster declared under section 401

⁶⁰ Pub. L. No. 109-308, § 3(2), 120 Stat. 1725, 1725-26 (codified as amended at 42 U.S.C. § 5196(j)(2)).

⁶¹ Pub. L. No. 93-288, § 401, *as added by* Pub. L. No. 100-707, § 106(a)(3) (codified as amended at 42 U.S.C. § 5170).

⁶² Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified as amended at 42 U.S.C. § 5170b(a)(3)(J)).

⁶³ Most of the text in this subpart of this article consists of nearly verbatim reproductions of the text of Fed. Emergency Mgmt. Agency, Disaster Assistance Policy (DAP) 9523.19, Eligible Costs Related to Pet Evacuations and Sheltering (Oct. 24, 2007), *available at* http://www.fema.gov/pdf/government/grant/pa/9523_19.pdf.

⁶⁴ This FEMA policy supersedes all previous FEMA guidance on eligible costs related to pet evacuations and sheltering and is scheduled to undergo a 3-year policy review by October 24, 2010. DAP9523.19 (IX) and (X).

of the Stafford Act,⁶⁵ although the FEMA policy also applies to costs accrued following an emergency declaration under the Stafford Act.⁶⁶

1. Purpose and Scope

Originating from the Public Assistance Division of FEMA's Disaster Assistance Directorate,⁶⁷ the FEMA policy on "Eligible Costs Related to Pet Evacuations and Sheltering" is intended to "identify the expenses related to [s]tate and local governments' emergency pet evacuation and sheltering activities that may be eligible for reimbursement following" a major disaster or emergency declaration under the Stafford Act.⁶⁸ FEMA will reimburse eligible costs under this policy only until the pet owner transitions out of emergency sheltering provided through FEMA's Public Assistance program.⁶⁹

⁶⁵ Pub. L. No. 109-308, § 4 (codified as amended at 42 U.S.C. § 5170b(a)(3)(I)); *see also* DAP9523.19 (V); Pub. L. No. 93-288, § 401, *as added by* Pub. L. No. 100-707, § 106(a)(3) (codified as amended at 42 U.S.C. § 5170) (providing the procedure for a Presidential declaration that a major disaster exists); and Pub. L. No. 93-288, § 403, *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4697, *and amended by* Pub. L. No. 109-295, § 689(b), 120 Stat. 1355, 1449 *and* Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified as amended at 42 U.S.C. § 5170b(a)) ("Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a [declared] major disaster[.]").

⁶⁶ DAP9523.19 (III) ("The purpose of this policy is to identify the expenses related to State and local governments' emergency pet evacuation and sheltering activities that may be eligible for reimbursement following a major disaster or emergency declaration.").

⁶⁷ *Id.* (VIII).

⁶⁸ *Id.* (III) & (IV); *see also* Stafford Act sections 403 (codified at 42 U.S.C. § 5170b) (essential assistance provided by federal agencies during a declared major disaster) and 502 (codified at 42 U.S.C. § 5192) (federal emergency assistance provided by federal agencies during a declared emergency pursuant to section 501 of the Stafford Act (codified at 42 U.S.C. § 5191)); and 44 C.F.R. §§ 206.223(a) (requirements for items of work to be eligible for federal financial assistance under the Stafford Act) and 206.225(a) (requirements for certain emergency protective measures to be eligible for federal financial assistance under the Stafford Act).

⁶⁹ The length of operation clause of the FEMA policy specifically refers to emergency sheltering authorized under section 403 of the Stafford Act. DAP9523.19 (VII)(F); *see also* Pub. L. No. 93-288, § 403, *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4697, *and amended by* Pub. L. No. 109-295, § 689(b), 120 Stat. 1355, 1449 *and* Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified as amended at 42 U.S.C. § 5170b(a)(3)(B)) (in relevant part allowing federal agencies, on the direction of the President after a major disaster declared under section 401 of the Stafford Act, to provide emergency shelter).

2. Eligible Applicants

Under the FEMA policy, only state and local governments may apply for direct financial assistance from FEMA for sheltering and rescuing household pets and service animals following a Stafford Act major disaster or emergency declaration.⁷⁰ More specifically, the FEMA policy permits state and local governments receiving evacuees from areas declared a major disaster or an emergency under the Stafford Act to seek reimbursement from FEMA for eligible pet rescue, sheltering, and evacuation-support costs;⁷¹ and state and local governments outside the designated disaster area to seek reimbursement from FEMA under mutual aid protocols through the affected and supported states.⁷²

Although contractors or private non-profit (PNP) organizations that shelter or rescue household pets and service animals cannot be reimbursed directly as an applicant under the FEMA policy, these entities may be reimbursed through a state or local government for providing such animal sheltering or rescue services.⁷³

3. Reimbursements for Household Pet Rescue Operations

The FEMA policy permits state and local governments to be reimbursed for household pet rescue operations conducted directly by

⁷⁰ DAP9523.19 (VII)(B)(2). Because the PETS Act does not provide statutory definitions for “household pet” and “service animal” (despite the repeated use of these terms in the text of the Act), FEMA has defined these terms for purposes of its policy on reimbursements for pet evacuations and sheltering:

“Household Pet” means “[a] domesticated animal, such as a dog, cat, bird, rabbit, rodent, or turtle that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.” “Service Animal” means “[a]ny guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

Id. (VII)(A)(1) & (2).

⁷¹ *Id.* (VII)(B).

⁷² *Id.* (VII)(B)(1); *see also* 44 C.F.R. § 206.223(a)(2) & (3) (requiring items of work eligible for federal assistance under the Stafford Act to be “located within a designated disaster area, except that sheltering and evacuation activities may be located outside the designated disaster area,” and to be “the legal responsibility of an eligible applicant.”).

⁷³ Such indirect reimbursements under the FEMA policy would require that: (1) a written statement from an eligible applicant under the FEMA policy be presented in which the applicant verifies that the contractor or PNP is performing or has performed sheltering or rescuing operations on the applicant's behalf; and (2) the related expenses are documented. DAP9523.19 (VII)(B)(2).

the state or local government or under contract by other service providers.⁷⁴ Table 1 summarizes some reimbursable rescue costs:

Table 1: Reimbursable Costs for Household Pet Rescue Operations	
DAP9523.19 (VII)(C)	Eligible Cost
(1)	Overtime pay for regular full-time employees of applicant.
(2)	Regular-time and overtime pay for contract labor (including mutual aid agreements) specifically hired by the eligible applicant to provide additional support required as a result of the disaster.
(3)	The ownership and operation costs of applicant-owned or leased equipment to provide eligible pet transportation to congregate pet shelters, pursuant to certain federal regulations. ⁷⁵ The cost of leasing equipment to provide eligible pet transportation to congregate pet shelters.

4. Reimbursements for Congregate Household Pet Sheltering Operations

The FEMA policy permits state and local governments to be reimbursed for sheltering operations for pets conducted directly by the state or local government or under contract by other sheltering providers.⁷⁶ Table 2 summarizes some of the reimbursable sheltering costs authorized under the FEMA policy.

Table 2: Reimbursable Costs for Congregate Household Pet Sheltering Operations	
DAP9523.19 (VII)(D) Section	Eligible Cost
(1)	Facilities.
(2)	Supplies and commodities reasonably needed for and used directly on the declared disaster.

⁷⁴ *Id.* (VII)(C).

⁷⁵ See *e.g.*, 44 C.F.R. § 206.228(a)(1) (providing guidelines for federal reimbursement of ownership and operation costs of applicant-owned equipment used to perform eligible work under the Stafford Act) and (2) (excluding cost of equipment operator labor as a reimbursable cost under the Stafford Act). Under the FEMA policy, “Congregate Household Pet Shelters” (shortened to “Congregate Pet Shelters” throughout the text of the policy) means “[a]ny private or public facility that provides refuge to rescued household pets and the household pets of shelterees in response to a declared major disaster or emergency.” DAP9523.19 (VII)(A)(3).

⁷⁶ *Id.* (VII)(D).

In contrast to household pets, service animals may be sheltered with their owners in “congregate shelters” under the FEMA policy.⁷⁷

D. Other Federal Laws and Policies Complementing the PETS Act

While the PETS Act catalyzes the development and implementation of animal-related plans and preparedness efforts at the state and local levels of government, other federal laws and policy documents facilitate effective implementation of the PETS Act by federal agencies involved in federal emergency preparedness and response efforts. The PETS Act functions in tandem most notably with two other federal sources of law and policy: the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) and the *National Response Framework* (NRF).⁷⁸

1. Post-Katrina Emergency Management Reform Act of 2006

PKEMRA⁷⁹ contains several provisions related to animals in federal emergency planning and preparedness efforts, including provisions requiring the President to ensure that each federal agency with responsibilities under the National Response Plan (NRP) develops operational plans in support of the NRP;⁸⁰ and that such plans address policies and provisions for pets during mass evacuations conducted by state, local, and tribal governments with the support of the relevant

⁷⁷ DAP9523.19 (VII)(E); *see also* DAP9523.15 (VII)(B)(1) (defining “Congregate Shelter” as “[a]ny private or public facility that provides contingency congregate refuge to evacuees, but that day-to-day serves a non-refuge function[.]” and identifying schools, stadiums, and churches as examples); and *supra*, note 70 (meaning of “Household Pet” and “Service Animal”).

⁷⁸ The AVMA publicly supports this argument. American Veterinary Medical Association, Animal Health, PETS Act FAQ, http://www.avma.org/disaster/petsact_faq.asp.

⁷⁹ Pub. L. No. 109-295, tit. VI, 120 Stat. 1355, 1394. Signed into law by President Bush two days before the PETS Act, PKEMRA amended the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, to provide that FEMA’s “primary mission” is to “reduce the loss of life and property and protect the [U.S.] from all hazards” by leading and supporting the nation in a “risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.” Pub. L. No. 109-295, § 611(11), 120 Stat. 1355, 1396, amending Pub. L. No. 107-296, § 503, 116 Stat. 2135, 2213 (codified as amended at 6 U.S.C. § 313(b)(1)).

⁸⁰ Pub. L. No. 109-295, § 653(a)(4), 120 Stat. 1355, 1430-31, *amended by* Pub. L. No. 110-53, § 407(1)(A), 121 Stat. 266, 304 (codified as amended at 6 U.S.C. § 753(a)(4)). The National Response Plan was superseded by the *National Response Framework* in 2008. NATIONAL RESPONSE FRAMEWORK, *supra* note 9.

federal agency.⁸¹ Like section 4 of the PETS Act, PKEMRA also amended the Stafford Act to authorize federal agencies (on the direction of the President after a major disaster declaration is made under the Stafford Act) to provide rescue, care, shelter, and essential needs to people with household pets and service animals, as well as to the pets and animals themselves.⁸²

The Public Law containing PKEMRA also includes a general provision requiring DHS, in approving standards for state and local emergency preparedness operational plans submitted for review (as part of the process for states to obtain financial contributions from the federal government for “necessary and essential State and local emergency preparedness personnel and administrative expenses” under the Stafford Act⁸³), to ensure that such plans take into account “the needs of individuals with household pets and service animals before, during, and following a major disaster or emergency”; provided that federal agencies may provide assistance as described in section 403(a) of the Stafford Act⁸⁴ to carry out such plans.⁸⁵

2. National Response Framework (NRF)

The NRF⁸⁶ is a policy document that presents “the guiding principles [enabling] all response partners in the U.S. to prepare for and

⁸¹ Pub. L. No. 109-295, § 653(b)(4)(A)(iv), 120 Stat. 1355, 1431, *amended by* Pub. L. No. 110-53, § 407(1)(A), 121 Stat. 266, 304 (codified as amended at 6 U.S.C. § 753(b)(4)(A)(iv)).

⁸² Pub. L. No. 109-295, § 689(b)(2)(D), 120 Stat. 1355, 1449; *cf.* Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified at 42 U.S.C. § 5170b(a)(3)(I)).

⁸³ Pub. L. No. 93-288, § 613(a) and (b)(3), *as added by* Pub. L. No. 103-337, § 3411(a)(3), 108 Stat. 2663, 3106, *and amended by* Pub. L. No. 107-188, § 151, 116 Stat. 594, 630 *and* Pub. L. No. 109-295, § 631, 120 Stat. 1355, 1420 (codified as amended at 42 U.S.C. § 5196b(a) and (b)(3)).

⁸⁴ Pub. L. No. 93-288, § 403(a), *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4697, *and amended by* Pub. L. No. 109-295, § 689(b), 120 Stat. 1355, 1449 *and* Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified as amended at 42 U.S.C. § 5170b(a)) (authorizing federal agencies, on the direction of the President after a major disaster declaration is made under the Stafford Act, to provide assistance essential to meeting immediate threats to life and property resulting from a major disaster).

⁸⁵ Pub. L. No. 109-295, § 536, 120 Stat. 1355, 1385; *cf.* Pub. L. No. 109-308, §2 (codified as amended at 42 U.S.C. § 5196b(g)) (codifying, in essence, the PKEMRA provision as an amendment to the Stafford Act).

⁸⁶ NATIONAL RESPONSE FRAMEWORK, *supra* note 9; U.S. DEP’T OF HOMELAND SEC., OVERVIEW: ESF AND SUPPORT ANNEXES COORDINATING FEDERAL ASSISTANCE IN SUPPORT OF THE NATIONAL RESPONSE FRAMEWORK (Jan. 2008), *available at* <http://www.fema.gov/pdf/emergency/nrf/nrf-overview.pdf>; and NRF Resource Center, *supra* note 9.

provide a unified national response to disasters and emergencies[.]”⁸⁷ Establishing a “comprehensive, national, all-hazards approach to domestic incident response[.]”⁸⁸ the NRF is built upon scalable, flexible, and adaptable coordinating structures to align key roles and responsibilities across the U.S.; explains the common discipline and structures that have been exercised and matured at the local, tribal, state, and national levels over time; describes key lessons learned from past disasters such as Hurricane Katrina and focuses on how the federal government is organized to support communities and states in catastrophic incidents; and builds upon the National Incident Management System (NIMS).⁸⁹

V. DISCUSSION: STRENGTHS AND AREAS FOR IMPROVEMENT

The PETS Act undoubtedly represents a vital step in promoting animal needs in emergency preparedness and management efforts as a matter of federal, state, and local policy and has made great strides in improving planning for animal needs during response operations to disasters and other emergencies throughout the U.S.

A. Strengths: Positive Impacts of the PETS Act

1. Greater Public Awareness and Preparedness

Hurricane Katrina brought to the forefront of the national consciousness the importance of preparing for animal needs during responses to disasters and emergencies. The enactment of the PETS Act was indicative of how high the public’s awareness had become on this issue in the months following Katrina. Such public awareness could be partly attributed to the public education and outreach efforts of the

⁸⁷ NRF Resource Center, *supra* note 9.

⁸⁸ *Id.*

⁸⁹ NATIONAL RESPONSE FRAMEWORK, *supra* note 9, at 1. NIMS provides a “systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental organizations, and the private sector to work seamlessly to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity, in order to reduce the loss of life and property and harm to the environment.” The NRF works in tandem with NIMS: the NRF provides “the structure and mechanisms for national-level policy for incident management”; NIMS provides “the template for the management of incidents.” Fed. Emergency Mgmt. Agency, NIMS Resource Center, About the National Incident Management System (NIMS), <http://www.fema.gov/emergency/nims/AboutNIMS.shtm>; and U.S. DEP’T OF HOMELAND SEC., NATIONAL INCIDENT MANAGEMENT SYSTEM (Dec. 2008), *available at* http://www.fema.gov/pdf/emergency/nims/NIMS_core.pdf.

federal government and animal health and welfare organizations.⁹⁰ Since the PETS Act became law, these organizations have continued their education and outreach efforts and have developed resources to help adult and juvenile members of the public prepare for the impact that disasters or emergencies may have on their pets or other animals.⁹¹

The non-profit sector also has stepped up its public animal preparedness efforts since the PETS Act became law. In February 2008, the AVMA, American Veterinary Medical Foundation (AVMF), and Red Cross formalized their decade-old Statement of Understanding on protecting animals and pets during emergencies by signing a Memorandum of Understanding (MOU) that lay the groundwork for increased cooperation between these three national organizations.⁹²

⁹⁰ Press Release, U.S. Dep't of Homeland Sec., Homeland Security and Animal Groups Encourage Americans to Include Their Pets When Preparing for Emergencies (May 31, 2006), *available at* <http://www.prnewswire.com/news-releases/homeland-security-and-animal-groups-encourage-americans-to-include-their-pets-when-preparing-for-emergencies-56588342.html> (announcing a joint effort between DHS, AVMA, HSUS, ASPCA, and the American Kennel Club "to encourage pet owners to prepare for emergencies" and the development of a "new brochure that highlights the key steps pet owners should take to prepare themselves and their animals."); U.S. DEP'T OF HOMELAND SEC., PREPARING YOUR PETS FOR EMERGENCIES MAKES SENSE. GET READY NOW, *available at* <http://www.ready.gov/sites/default/files/documents/files/pets%5B1%5D.pdf>.

⁹¹ Fed. Emergency Mgmt. Agency, Information for Pet Owners, <http://www.fema.gov/plan/prepare/animals.shtm>; Fed. Emergency Mgmt. Agency, FEMA for Kids, Pets and Disasters, <http://www.fema.gov/kids/pets.htm>; Humane Society of the United States, Disaster Preparedness for Pets: Keep you family and pets safe, Oct. 12, 2009, http://www.humanesociety.org/issues/animal_rescue/tips/disaster_preparedness_for_1.html (last visited Jan. 22, 2010); and American Veterinary Medical Association, Animal Health, AVMA disaster preparedness, <http://www.avma.org/disaster/default.asp>.

⁹² See *supra* note 26. Under this MOU: (1) the AVMA serves as a technical adviser to the Red Cross on all animal and veterinary related aspects of disaster-response efforts; (2) Red Cross volunteers refer all animal medical questions and needs to veterinarians affiliated with the national, state, county, or local veterinary medical associations during disasters; and (3) the AVMF assists in funding programs developed under the MOU through AVMF grants. American Veterinary Medical Association, Animal Health, History of AVMA Emergency Preparedness and Response Programs, <http://www.avma.org/vmat/history.asp>; Press Release, American Veterinary Medical Association, AVMA, AVMF, Red Cross enter agreement to coordinate animal rescue efforts and programs (March 25, 2008), *available at* <http://www.prnewswire.com/news-releases/avma-avmf-red-cross-enter-agreement-to-coordinate-animal-rescue-efforts-and-programs-61944387.html>.

2. Improvements in Local Planning Efforts

Local disaster and emergency planning efforts related to animals have improved since the PETS Act became law. One notable example is the disaster pet plan that San Diego County, California developed in response to the PETS Act, which proved to be effective during the Fall 2007 California wildfire crisis.⁹³ Through the joint efforts of the San Diego County Department of Animal Services, local animal welfare groups, and the Red Cross in executing the pet plan, pets and their owners were able to stay together during the wildfires:

- Common areas and green space adjacent to local shelters were made available for kennels, and volunteers from animal welfare organizations assisted with the processing and care of small pets that had been brought to the shelter by their owners. One official with the San Diego County Department of Animal Services observed that "[m]any pet owners camped out and took personal care of their animals, and owners were able to go into the...shelters for rest and nourishment themselves.... It was a 'win-win' situation for both the pets and their owners."⁹⁴
- The San Diego Humane Society and SPCA (Society for Prevention of Cruelty to Animals) supplied a Mobile Universal Transport and Treatment vehicle ("MUTT mobile") that was stocked with medical supplies and a veterinarian on-board.

FEMA hailed these efforts in San Diego as proof "that keeping pets and people together in the face of disaster can be done" through a "caring and coordinated effort."⁹⁵

3. Improvements in State Planning Efforts

One month before the first anniversary of Hurricane Katrina and two months before the PETS Act was signed into law, HSUS reported that seven states (including Louisiana) had passed legislation concerning animal disaster and emergency planning and response, and

⁹³ News Release, Fed. Emergency Mgmt. Agency, Release No. 1731-052, A Disaster Pet Plan That Worked For San Diego: Pets And People Staying Together (Nov. 29, 2007), available at <http://www.fema.gov/news/newsrelease.fema?id=41816>.

⁹⁴ *Id.*

⁹⁵ *Id.*

that four other states were considering similar bills.⁹⁶ As of mid-January 2010, the AVMA reported that over thirty states (including Maryland, Pennsylvania, and nearly every other state in the Mid-Atlantic region of the U.S.) had animal disaster plans in place and available.⁹⁷

4. Improvements in Federal Planning Efforts

Federal disaster and emergency planning efforts related to animals also have improved since the PETS Act became law. The federal government and animal health and welfare organizations have partnered to increase public awareness of the importance of planning and preparing for animal needs during responses to disasters and emergencies.⁹⁸ For example, HSUS reports that it now works closely with the U.S. Department of Agriculture (USDA) and FEMA on disaster plans for animal welfare;⁹⁹ that USDA has established a division focused on emergency management issues for pets and service animals;¹⁰⁰ and

⁹⁶ Press Release, Humane Society of the United States, With Hurricane Season Upon Us, Congress Passes Landmark Bill To Leave No Pet Behind (Aug. 4, 2006), *available at* http://www.hsus.org/press_and_publications/press_releases/with_hurricane_season_upon.html (last visited Jan. 22, 2010). The states that had already passed animal disaster planning and response laws at the time of this press release were Maine, New Mexico, Florida, Hawaii, Louisiana, New Hampshire and Vermont; the states that were considering such bills were California, Illinois, New Jersey and New York. *Id.* By the fourth anniversary of Hurricane Katrina, HSUS reported that twenty states had enacted laws to include animals in disaster and emergency planning. Press Release, Humane Society of the United States, Four Years After Katrina, Animal Welfare in Gulf Region Looking Up (Aug. 28, 2009), *available at* http://www.humanesociety.org/news/news/2009/08/4_years_after_katrina_animal_welfare_in_gulf_region_looking_up082809.html.

⁹⁷ American Veterinary Medical Association, Animal Health, Animal disaster plans and resources by state, http://www.avma.org/disaster/state_resources/default.asp; *cf.* Friends of Animals, Animal Disaster Plans of U.S. States (Oct. 26, 2006), <http://www.friendsofanimals.org/programs/animal-disaster-plans/index.php> (updated 20 days after the PETS Act was signed into law). The District of Columbia, Delaware, and West Virginia appeared to be the only jurisdictions in the Mid-Atlantic region that did not have animal disaster plans available as of mid-January 2010.

⁹⁸ See *supra* notes 93-94 and related text.

⁹⁹ HSUS Four Years After Katrina, *supra* note 99.

¹⁰⁰ U.S. Dep't of Agriculture, Animal and Plant Health Inspection Service, Emergency Preparedness and Response, http://www.aphis.usda.gov/emergency_response/; and U.S. Dep't of Agriculture, Animal and Plant Health Inspection Service, National Center for Animal Health Emergency Management, http://www.aphis.usda.gov/animal_health/emergency_management/. HSUS also reports that it has worked with Congress to secure appropriations funding for the USDA's disaster planning efforts for animals. HSUS Four Years After Katrina, *supra* note 99.

that FEMA has established a program to coordinate actions among federal agencies, HSUS, and other organizations.¹⁰¹

B. Shortcomings of the PETS Act and Potential Next Steps

1. Gaps in the PETS Act: Authority of Federal Agencies

While the PETS Act specifically authorizes federal agencies to provide for the needs of household pets and service animals and their owners when responding to major disasters declared under the Stafford Act,¹⁰² the PETS Act does not include a similar authorization for federal agencies responding to emergencies declared under the Stafford Act.¹⁰³ Despite this omission in the statutory scheme created by the PETS Act, several existing statutory¹⁰⁴ and regulatory¹⁰⁵ provisions furnish broad legal authority under which federal agencies may provide for animal needs when responding to emergencies declared under the Stafford Act.

¹⁰¹ *Id.*

¹⁰² Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726, *amending* Pub. L. No. 93-288, § 403(a)(3), *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4697, *and as amended by* Pub. L. No. 109-295, § 689(b), 120 Stat. 1355, 1449 (codified as amended at 42 U.S.C. § 5170b(a)(3)(J)); and Pub. L. No. 93-288, § 401, *as added by* Pub. L. No. 100-707, § 106(a)(3) (codified as amended at 42 U.S.C. § 5170).

¹⁰³ Pub. L. No. 93-288, § 501, *as added by* Pub. L. No. 100-707, § 107(a), 102 Stat. 4689, 4706 (codified as amended at 42 U.S.C. § 5191(a)); and Pub. L. No. 93-288, § 502, *as added by* Pub. L. No. 100-707, § 107(a), 102 Stat. 4689, 4706, *and amended by* Pub. L. No. 109-295, § 681(b), 120 Stat. 1355, 1444 (codified as amended at 42 U.S.C. § 5192).

¹⁰⁴ *See e.g.*, 42 U.S.C. § 5192(a)(4) (authorizing the President to provide emergency assistance through federal agencies during a declared emergency) and (b) (authorizing the President to provide assistance with respect to efforts to save lives and to protect property and public health and safety), *cf.* 42 U.S.C. § 5170b(a)(3) ("Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster ... [including the performance of] any work or services essential to saving lives and protecting and preserving property or public health and safety[.]").

¹⁰⁵ *See e.g.*, 44 C.F.R. § 206.5(b) (authorizing certain FEMA officials to direct federal agencies to support emergency efforts by state and local governments to save lives and to protect property and public health and safety during declared emergencies) and (c)(3) (authorizing certain FEMA officials to direct federal agencies to provide emergency assistance necessary to save lives and to protect property and public health and safety by performing certain work or services authorized under the Stafford Act during declared emergencies); *cf.* 42 U.S.C. § 5170b(a)(3) ("Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster ... [including the performance of] any work or services essential to saving lives and protecting and preserving property or public health and safety[.]").

Although this omission in the statutory language may reflect a deliberate decision by Congress to provide less detailed direction in federal responses to emergencies compared to major disasters,¹⁰⁶ Congress should revisit the PETS Act to clarify its intent regarding this matter.

Furthermore, Congress should revisit the PETS Act, PKEMRA, and the NRF “to ensure comprehensive coordination of command and control for implementation of the PETS Act” and thus “resolve significant gaps for effective implementation at all levels of government.”¹⁰⁷

2. Clarification of the FEMA Policy

Although FEMA’s policy on reimbursing expenses related to pet evacuations and sheltering applies to all major disasters and emergencies declared under the Stafford Act, FEMA will reimburse such expenses under the current policy only until a pet owner transitions out of emergency sheltering provided through FEMA’s Public Assistance program as authorized under section 403 of the Stafford Act.¹⁰⁸ The length of operation of this FEMA policy is therefore clear in the context of major disasters declared under the Stafford Act, given that section 403 of the Stafford Act applies after a major disaster declaration has been made under the Act,¹⁰⁹ but ambiguous in the context of

¹⁰⁶ This policy decision is reasonable and justifiable considering the fact that “emergencies” cover a much broader range of situations than “major disasters” do under the Stafford Act. *Cf.* 42 U.S.C. § 5122(1) (*see supra*, note 53) and (2) (*see supra*, note 54). In general, the Stafford Act does not provide as many specific details on the types of assistance that federal agencies may provide during declared emergencies as it does on the types of assistance that federal agencies may provide during declared major disasters. Such a difference in detail level is evident throughout the statutory text of the sections of the Stafford Act concerning federal responses to declared emergencies compared to those sections concerning federal responses to declared major disasters. *Cf.* section 502 of the Stafford Act (42 U.S.C. § 5192) and sections 402 and 403 of the Stafford Act (42 U.S.C. §§ 5170a and 5170b).

¹⁰⁷ American Veterinary Medical Association, AVMA Policy, Pet Evacuation and Transportation Standards (PETS) Act Implementation (April 2008), http://www.avma.org/issues/policy/pets_act.asp.

¹⁰⁸ DAP9523.19 (IV) and (VII)(F); and Pub. L. No. 93-288, § 403, *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4697, *and amended by* Pub. L. No. 109-295, § 689(b), 120 Stat. 1355, 1449 *and* Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified as amended at 42 U.S.C. § 5170b(a)(3)(B)).

¹⁰⁹ Pub. L. No. 93-288, § 403, *as added by* Pub. L. No. 100-707, § 106(a)(3), 102 Stat. 4689, 4697, *and amended by* Pub. L. No. 109-295, § 689(b), 120 Stat. 1355, 1449 *and* Pub. L. No. 109-308, § 4, 120 Stat. 1725, 1726 (codified as amended at 42 U.S.C. §

emergencies declared under the Act. Because emergency sheltering has been provided during past emergencies declared under the Stafford Act (including Hurricane Katrina), and because FEMA has reimbursed certain expenses related to such emergency sheltering,¹¹⁰ the current FEMA policy appears to allow state and local governments to continue receiving reimbursements from FEMA once a pet owner transitions out of emergency sheltering provided during declared emergencies. FEMA should clarify this point when it reviews this policy in October 2010.

3. Implementation Gaps

Although many states have taken steps to address animal needs during responses to disasters or other emergencies since the PETS Act became law,¹¹¹ over a dozen U.S. jurisdictions had not taken such steps as of mid-January 2010.¹¹² This situation suggests that implementation of the PETS Act still was incomplete more than three years after becoming law. There is still a need to advocate and promote animal

5170b(a)(3)(B)); and Pub. L. No. 93-288, § 401, *as added by* Pub. L. No. 100-707, § 106(a)(3) (codified as amended at 42 U.S.C. § 5170).

¹¹⁰ Such emergency sheltering was provided in states that were not directly affected by Hurricane Katrina but that received evacuees from areas devastated by Hurricane Katrina. Fed. Emergency Mgmt. Agency, Disaster Specific Guidance #2, Eligible Costs for Emergency Declarations: Hurricane Katrina (Sept. 9, 2005), *available at* [http://rimsinland.oes.ca.gov/WebPage/oeswebsite.nsf/ClientOESFileLibrary/Hurricane%20Katrina/\\$file/DSG-2%20Sheltering%20Costs.pdf](http://rimsinland.oes.ca.gov/WebPage/oeswebsite.nsf/ClientOESFileLibrary/Hurricane%20Katrina/$file/DSG-2%20Sheltering%20Costs.pdf) (invoking the authority of title 5 of the Stafford Act and noting that “the President has declared Emergency Declarations in several states making Federal assistance immediately available to State and local governments for 100% of the eligible costs they incur to provide shelter and care to Katrina’s victims[]”); *see also* Hurricane Katrina Fact Sheet, Fed. Emergency Mgmt. Agency, Emergency Declarations for Sheltering Evacuees (Sept. 9, 2005), *available at* http://www.fema.gov/pdf/government/grant/pa/fs_403sheltering.pdf (providing that “States that receive evacuees from areas impacted by Hurricane Katrina may request an emergency declaration under Section 501 of the Stafford Act to seek reimbursement for costs related to sheltering operations[]”); and DAP9523.15 (VI) (providing that “States and local governments that receive evacuees from areas declared an emergency or major disaster may seek reimbursement for eligible sheltering and evacuation-support costs in accordance with mutual aid reimbursement protocols, through the affected and supported state(s)[]”).

¹¹¹ *Cf.* AVMA Animal disaster plans and resources by state, *supra* note 100, and Friends of Animals, *supra* note 100.

¹¹² AVMA Animal disaster plans and resources by state, *supra* note 100. Some critics of the PETS Act have argued that state and local governments are likely to rely on the services of non-profit organizations rather than develop formal animal disaster and emergency plans because of the limited financial resources available to them to implement the PETS Act.” LESLIE IRVINE, ANIMALS AND SOCIETY INSTITUTE, POLICY PAPER, ANIMALS IN DISASTERS: RESPONSIBILITY AND ACTION 16-17 (2007), *available at* <http://www.humanesocietyuniversity.org/files/emergenciesdisasters.pdf>.

needs in emergency preparedness and management efforts as a matter of federal, state, and local policy nationwide. As suggested by prominent organizations like the AVMA, DHS should take steps to implement the PETS Act “fully” and to provide federal leadership on effective and integrated animal emergency response by:

1. developing a dedicated implementation team;
2. invoking its legal and preparedness funding authorities to create and approve PETS Act programs and training materials, and to provide support for operational resources for states to utilize;
3. providing an adequate FEMA budget over several years to support program roll-out and implementation;
4. comprehensive and continuous program and policy coordination through all phases of the emergency management cycle, including preparedness and planning, exercises, emergency operations (*viz.*, evacuation, sheltering, triage and emergency veterinary care, field rescue, pet-owner reunification services, and support of service animals and their owners during evacuation operations and in settings where pets are prohibited), and recovery;
5. training subject matter experts and establishing technical teams to assist in the field with animal-related services (*e.g.*, transport, animal identification and tracking, veterinary triage, emergency care, credentialing, sheltering, and post-incident evaluation in keeping with the PETS Act and related FEMA policy guidance) during emergency responses; and
6. effective federal integration of animal emergency response through multi-agency and multi-sector outreach and coordination.”¹¹³

¹¹³ Letter from W. Ron DeHaven, CEO, American Veterinary Medical Association, to Michael Chertoff, U.S. Sec’y of Homeland Sec. (June 10, 2008) and Letter from Lyle Vogel, Interim Assistant Executive Vice President, American Veterinary Medical Association, to the Fed. Emergency Mgmt. Agency (Sept. 13, 2007), *both available at* http://www.avma.org/advocacy/federal/regulatory/emergency_prep/pets_act_DHS_FEMA_NRF_ltr.pdf; *see also* American Veterinary Medical Association, Advocacy, Federal regulatory emergency preparedness and response, PETS Act, http://www.avma.org/advocacy/federal/regulatory/emergency_prep/pets_act.asp. The AVMA also has identified several specific challenges for state and local governments seeking reimbursements for pet sheltering and evacuation expenses from FEMA under its policy that need to be addressed as a practical matter. AVMA PETS Act FAQ, *supra* note 81.

One concrete “next step” that DHS can take would be to amend or supplement the NRF to address coordination of service and companion animal issues during emergency response operations by incorporating lessons learned before and since Hurricane Katrina and by clarifying “technical support roles for federal subject matter experts and their non-governmental organization (NGO) partners who work with requests for assistance from affected States.”¹¹⁴

VI. CONCLUSION

In August 2005, Hurricane Katrina brought devastation to the Gulf Coast of the United States. Tragedy resonated across the region with significant loss of life and property and social disruption. This tragedy also highlighted significant gaps in the management of pets and service animals in the face of a major disaster. While this was not the first time animals faced disaster without adequate planning and preparedness from government authorities, national attention prompted legislative and policy changes for the treatment of pets and animals during a disaster response, culminating in the enactment of the PETS Act in 2006.

While not a comprehensive solution, the PETS Act represents an attempt to close some of the gaps in planning and preparedness efforts that Hurricane Katrina brought to light. Since becoming law, many states have updated their disaster and emergency plans to include pets and service animals, and while many plans have never been tested in the face of a major disaster, there have been some promising successes. As discussed previously, the disaster pet plan that San Diego County, California developed in response to the PETS Act proved to be effective during the Fall 2007 California wildfire crisis. A large-scale event has yet to test the post-Katrina preparedness efforts and federal policies related to animal needs during responses to disasters and emergencies. Such an event surely would reveal areas for improvement to be acted upon by decision-makers. In the meantime, concrete steps can be taken to improve the welfare of pets and service animals during disasters and emergencies. State and local planners should develop, exercise, and maintain animal disaster plans for their respective jurisdictions. Congress should revisit the PETS Act and FEMA should revisit its

¹¹⁴ The AVMA supports this recommendation, arguing that the NRF currently is not sufficiently comprehensive to ensure an optimal emergency response because it does not include a “stand-alone document addressing animal emergency support functions[.]” Letter from W. Ron DeHaven, *supra* note 116, and Letter from Lyle Vogel, *supra* note 116.

Disaster Assistance Policy to resolve gaps that have been identified already. DHS can amend or supplement the NRF to address coordination of service and companion animal issues during future emergency response operations. These actions at the federal, state, and local levels will ensure that U.S. policy and preparedness efforts nationwide will benefit animals and their owners during future disasters and emergencies.